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Supreme Court, U.S.
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No. 00-121

IN THE SUPREME COURT OF THE UNITED STATES

GEORGE DUNCAN, *Petitioner*,

v.

SHERMAN WALKER, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF AMICI CURIAE STATES OF CALIFORNIA, NEVADA, AND WEST VIRGINIA IN SUPPORT OF PETITIONER GEORGE DUNCAN

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QUESTIONS PRESENTED

1. Whether a prior federal habeas corpus petition is an "application for State post-conviction or other collateral review" within the meaning of 28 U.S.C. § 2244(d)(2), which provides that the one-year statute of limitations for federal habeas corpus petitions set forth in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) is tolled during the pendency of such an application.

2. Whether a prior federal habeas corpus petition, dismissed without prejudice for failure to indicate that the claims it asserts have been exhausted in state court, is "properly filed" under 28 U.S.C. § 2244(d)(2) and therefore tolls the one-year AEDPA statute of limitations during its pendency.

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IN THE SUPREME COURT OF THE UNITED STATES

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INTEREST OF AMICI CURIAE

Amici curiae are the legal representatives of their states' executives and of the People in their states' post-conviction litigation. The states have a weighty interest in the finality and enforcement of their state criminal judgments. This interest embraces concerns about the timely pursuit of post-conviction remedies in federal court.

Amici have a significant interest in this particular case since the *Walker* opinion does substantial damage to one of the AEDPA's most important components, the statute of limitations. Under *Walker's* interpretation, petitioners are permitted to toll the limitations period almost indefinitely. This result defeats the very purpose of the statute of limitations to place finite restrictions on the time for filing federal habeas corpus petitions. Furthermore, the opinion ignores the states' valid interest in the timely resolution of their state criminal judgments.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari should be granted because it raises important questions of federal law that have not been, but should be, settled by this Court. U.S. Supreme Ct. R. 10(c). Furthermore, granting the petition is appropriate because one United States court of appeals has entered a decision in conflict with the decisions of three other United States courts of appeals on the same important matter. U.S. Supreme Ct. R. 10(a).

ARGUMENT

The petition for writ of certiorari should be granted because the determination of whether the AEDPA's limitations period is tolled during the pendency of a properly filed federal petition is an issue of substantial importance to the states, as well as petitioners. As the petition points out, approximately 20,000 habeas corpus proceedings are commenced each year in the federal courts and a significant number of these petitions are dismissed without prejudice for failing to exhaust state remedies. Pet. at 12. Many of these cases return to federal court after exhaustion has been completed, thus making the issue of the tolling effect of the initial unexhausted petition a recurring question. This Court's determination that dismissal of an unexhausted petition does not bar a subsequent petition as second or successive makes the issue all the more prevalent. *See Slack v. McDaniel*, ___ U.S. ___; 120 S. Ct. 1595, 146 L.Ed.2d 542 (2000). Granting the petition and resolving this issue will impact a large number of cases and will settle an important question of federal law.[1/]

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1. Petitioner is also presenting a second question to the Court

Guidance from the Court is required because there is a division among the federal courts. In this case, the Second Circuit Court of Appeals concluded that the phrase "State post-conviction or other collateral review" contains a veiled reference to federal collateral review. The Third, Fifth, and Tenth Circuits have reached the opposite conclusion. *Grooms v. Johnson*, 208 F.3d 488 (5th Cir. 1999); *Jones v. Morton*, 195 F.3d 153 (3rd Cir. 1999); *Rhine v. Boone*, 182 F.3d 1153 (10th Cir. 1999). The decisions are squarely in conflict. In addition, published decisions of the federal district courts in California have reached opposite conclusions. *Compare Barrett v. Yearwood*, 63 F. Supp. 2d 1245, 1250 (E.D. Cal. 1999), with *Sperling v. White*, 30 F. Supp. 2d 1246, 1250 (C.D. Cal. 1998). Uniform application of the statute of limitations cannot be reached until the Court addresses the issue.

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concerning whether a prior federal habeas corpus petition, dismissed without prejudice for failure to indicate that the claims it asserts have been exhausted in state court, is "properly filed" under 28 U.S.C. § 2244(d)(2) and therefore tolls the one-year AEDPA statute of limitations during its pendency. Although this brief concentrates only on the first question presented, amici curiae believe this Court should grant the petition as to both questions.

CONCLUSION

For the reasons stated, as well as those set forth in the petition for writ of certiorari, amici curiae request that the petition be granted.

Dated: August 18, 2000.

Respectfully submitted,

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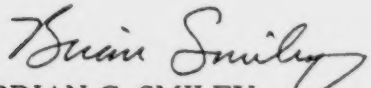

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